

REMARKS

The present application relates to hybrid maize plant and seed 34G13. Claims 41-56 have been added. No new matter has been added by the present amendment. Applicant respectfully requests consideration of the following remarks.

Detailed Action

A. Allowable Subject Matter

Claims 1-7, 20, and 33 were given a Notice of Allowability by the Examiner on May 2, 2003. Applicant is withdrawing from issue the above-identified case in accordance with MPEP §1308 and 37 C.F.R. §1.114 and submitting this preliminary amendment in conjunction with a Request for Continued Examination.

Applicant disagrees with the Examiner's reasons for allowance. Specifically, the Examiner states the prior art also does not teach the inbred parents of 34G13. Rather, such statement should read, the prior art does not teach the combination of the inbred parents to create hybrid 34G13.

B. Claims and Specification

Applicant acknowledges the rejection of claims 6, 8, 11, 15, 19, 21, 28, 32-34, and 38-40 under 35 U.S.C. § 112, second paragraph, as withdrawn in light of their cancellations. The rejection of claims 9-19, 22-32, and 34-40 under 35 U.S.C. § 112, first paragraph, is acknowledged as withdrawn. Finally, Applicant acknowledges the rejection of claim 33 as withdrawn in light of the amendment to the specification regarding the deposit of seeds of inbred maize plants GE486259 and GE515721.

The foregoing addition of new claims to this request for continued examination provide compliance with the requirement of assuring unrestricted public availability of a source of reproductive material of the hybrid maize seed 34G13, deposited under ATCC accession number PTA-4273 and the inbred parents GE486259 and GE515721, deposited under ATCC accession number(s) PTA-4276 and PTA-1306 of this invention.

Applicant submits, in order to expedite prosecution, new claims 41-56 list the type of traits that may be conferred. However it should be noted that 34G13 comprising a mutant gene or a transgene, even if it is for a transcription factor, is distinct from another hybrid maize plant

comprising that same mutant gene or transgene and still retains the benefit of Applicant's invention.

Applicant has also added claim 56 to further describe the line produced in such a manner by traits that do not vary from the deposited line at a 5% significance level when measured in the same environmental conditions. Phenotypic traits, an identifying characteristic, are utilized by those of ordinary skill in the art to compare two lines, and a phenotypic comparison is the method used by the patent office to evaluate the novelty of the deposited line itself. One of ordinary skill in the art of plant breeding would know how to evaluate the traits of two plant varieties to determine if there is no statistically significant variation when determined, for example, at a 5% significance level and when grown in the same environmental conditions between the traits expressed by those varieties. For the reasons aforementioned, it is respectfully submitted that Applicants' claims are sufficiently described and enabled by the specification.

Conclusion

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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